

THE
JUDGMENT and DOCTRINE

Of the *Clergy* of the
Church of England,

CONCERNING
One special Branch of the King's *Prerogative*,
Viz. In dispensing with the

Penall Laws,

Asserted by

The most Reverend Fathers in God, The Lords Arch-Bishops
Bancroft, Laud and Usher.

The Right Reverend Fathers in God, The Lords Bishops
Sanderson and Cartwright.

The Reverend Doctors, Sir **Thomas Ridley L. L. D.**
Dr Heylin, Dr Barrow, Dr Sherlock Master of the
Temple, Dr Hicks, Dr Hailson and Dr Puller.

And by the *ANONYMVS*, Author of the *Har-*
mony of Divinity and Law.

Together with the **Concurring Resolutions** of our Reverend
Judges, as most **Consonant** and **Agreeable** thereunto.

In a Letter from a Gentleman of Oxford, to his Friend at London.

Licenced the 2d. of May 1687.

Upon whomsoever God is understood to bestow the Sovereign Authority, he must also be understood to bestow upon him all the *Jura Majestatis*, or Essential Rights of Sovereignty, according to that Maxim, *Qui dat esse, dat et omnia pertinentia ad esse*; He that gives the Essence, gives also the Properties belonging to the Essence. Jovian, or an Answer to Julian the Apostate, chap. 11.

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London and Westminster.



S I R,

IN one of the late Conferences you were pleased to have with me, you seemed to be somewhat disatisfied upon the subject we were discoursing of, which was, whether the *King* had by Law such a *Supream Power* inherent in, and inseparably annexed to his Crown, as to Dispencc with Penal Laws.

I remember I then told you, we could not resolve our selves of this Great Point, but by these two wayes.

I. To see, how far the *Judgment* of our Church-men, appearing in their *Doctrines* (which are for our Edification) doth Warrant this *Prerogative* to be in the *King*.

A 2

II.

II. To see how far the *Judges Resolutions* (in declaring their sence of the *Law* of the *Land* in this doubtful *Question*,) do agree with such their *Judgments* and *Doctrines*.

And as for the *First*, Sir, I doubt not but to make it clear, past all peradventure, that our *Reverend Clergy* of the Church of *England* have unanimously concurred in this Point of *Doctrine*, that it doth inseparably belong to the *Kingly office* to dispence with *Penal Laws*, when ever such a *Supremacy* of Power shall be thought necessary to be exerted for the safety of the King, and the Good and Ease of his People in general. And if I can prove this undeniably to You; I hope then that this nice *Scruple* of yours (which by the way, I suppose, you will allow me to call your *tender Conscience*) will easily be removed; and consequently then it may be presumed, I shall have

have less difficulty to Satisfie You in the other Point, that *this sence* of the Law of the Land in the point in Question, is no other, than what is *exactly* Correspondent with the *Judgment* and *Doctrine* of the Clergy of the Church of *England*.

To begin then,

The Reverend Dean of *Worcester*, in his so deservedly applauded Answer to *Julian* the *Apostate*, declares, that the *English Realm* is a perfect *soveraignty*, or *Empire*, and that the King of *England* by the *Imperial Laws* of it, is a *Compleat*, *Imperial*, and *Independant* *Soveraign*. And he quotes *Coke* in *Cawdrye's Case*, who saith, that 'by the antient *Laws* of 'this *Realm*, *England* is an absolute *Empire*, and *Monarchy*; and that the 'King is furnished with plenary and *Entire* *Power*, *Prerogative*, and *Jurisdiction*, and is *supream Governour* over all 'persons within this *Realm*.

Dr Hick's *Jesuitian*. chap. 10.

Now it would be a contradiction to call this

this an Imperial Crown ; to acknowledge the King for supream over all Persons, — and that he is furnished with Plenary and entire Power , unless He have all Those Rights, which are involved in the very Notion of his Imperial Sovereignty.

By the Rights of Sovereign, saith He, I understand Those Prerogatives, and Pre-eminences of Power and Greatness, which are involved in the Formal Conception of Sovereignty, and are inseparably annexed to the Sovereign. — He hath no sharers or Co-partners in the Sovereignty; None Co-ordinate with him in Government ; no Equal, nor Superiour, but only God, to whom Alone He is subject, — ‘ All Power ‘ and Jurisdiction Spiritual and Temporal is derived and deducted from Him, as ‘ supream Head of These Churches, and ‘ Realms.

*Sir Robert
Poinex Knight
of the Bath,
his vindication
of Monarchy.
chap. 8.*

There are some Essential Rights of the Crown, which the Subjects cannot obtain from their Sovereign by any Grant or prescription

scription, without destroying the essential and individual Rights of Monarchy. These Rights, called the Flowers of the Crown, are Regalia Suprema, or Summa Jura Imperij, regno tuendo servientia, inherent to his Royal Function, and politick Capacity, and serve for the strength and support thereof — such are the Rights of making War and Peace, of having the last Appeal unto him, or his Great Council and supream Court; and of making Leagues, and of Dispensing with Penal Laws, granting pardons, and such like.

Now if the King hath a perfection and fulness of Imperial Power in him, as Dr ^{Dr. Hicks ut. Sup.} Hicks hath clearly made out, and This Power of dispensing with Penal Laws be (as it must be, or nothing) one of those Prerogatives and Pre-eminencies of power and Greatness, which are involved in the Formal Conception of Sovereignty; Then certainly it is very plain, that This is an Essential Right inseparably annexed to our Imperial Sovereign: and to go about
to

to deprive him of such an inherent Right, it would *tend to the disinherison of the King and his Crown.* This Phrase, he saith, of the *disinherison of the King and the Crown* in other * Acts of Parliament is called, *The Destruction of the King's Sovereignty, his Crown, his Regality, and things that tend thereunto, things that are openly against the King's Crown in Derogation of this Regality.*

And, Sir to convince You, that the King hath this Perfection and fulness of Power, more especially in matters of Religion, in his sacred Person, you may please to be informed, that that Great Metropolitan of *All England*, 'Arch-bishop Bancroft, when Question was made of what matters the Ecclesiastical judges have cognisance, either upon the exposition of the Statutes concerning Tythes, 'or any other thing Ecclesiastical, or upon 'the Statute i *Eliz.* concerning the High 'Commission, or in any other case in which 'there is not expresse Authority in Law, declared

4. Inst. p. 14.
Suprema Juris-
dictio & potes-
tas Regia, et si
Princeps velit,
se seperari non
possunt, sunt
enim ipsa for-
ma, et Substan-
tialis Essentia
Majestatis, ergo
manente Rege
ab eo abdicari
non possunt.
Cavedo, Pract.
observ. p. 2.
decis. 40. n. 8.
* Stat. of Præ-
munire, 16. R.
2. cap. 5.

Dr. Richard
Bancroft made
Lord Arch-
Bishop of Cant.
1604.
12. Co. fo. 64.
5. Jac.

declared, ' That the *King* himself may
 ' decide it in his *Royal Person*; and that the
 ' *Judges* are but the *Delegates* of the *King*,
 ' and that the *King* may take what *causes*
 ' he shall please to *determine*, from the *De-*
 ' *termination* of the *Judges*, and may deter-
 ' mine them himself. And the Archbishop
 ' said, that this was *clear* in *Divinity*, that
 ' such *Authority* belongs to the *King* by the
 ' word of *God* in the *Scripture*. So that
 Eminent Prelate.

For, as it is well observed by that Learn-
 ed Knight, and Doctor in the Civil Law,
 Sir Thomas Ridley. ' His Majesty, by
 ' communicating his *Authority* to the *Judges*
 ' to expound his *Laws*, doth not thereby
 ' abdicate the same from himself, but that
 ' he may assume it again to him, when,
 ' and as often as he pleaseth, whose *Inter-*
 ' pretation in that is to be preferred be-
 ' fore *Theirs*. For, as he saith in another
 place, ' He is both by the *Ordinance*
 ' of *God* and *Man*, *ως νομίζων*, (as the
 ' *Apostle* terms him) among them, that is,
 ' One who is *Supream Sovereign* above the

Ridley's View
 of the Civil and
 Ecclesiastical
 Law. dedicated
 to King James
 1. 3d Edition,
 part 4. chap. 1.
 Sect. 1.

Id. part 2. ch. 1
 sect. 7.

1 Pet. 2. 13.

B

Rest,

‘Rest, and whom they ought in *all* things
 ‘to obey, so it be not against the *Law* of
 ‘God, and *Common Justice* ; for *himself*
 ‘is instead of the *whole Law*, Yea, he is
 ‘the *Law* it self, and the *only* INTER-
 ‘PRETER thereof, as in whose *Breast*
 ‘is the *whole Knowledge* of the same.

Now, Sir, what Answer can you give
 to all This? if it be *clear in Divinity*, that
such Authority belongs to the King by the
word of God in the Scripture, with what
Colour of Reason can you deny the King’s
Imperial Sovereignty in dispensing with Pe-
nal Laws ?

But to proceed more clearly to the Point
 in Question, The most Reverend, Renown-
 ed and Religious Prelate and Patriot, Dr
 W. Laud, Archbishop of Canterbury, ‘A man
 ‘of such *Eminent vertue*, (as the Author
 ‘of his life writes of him) ‘Such an Ex-
 ‘emplary *Piety* towards God, such an un-
 ‘wearied *fidelity* to his Gracious Sovereign;
 ‘and of such a *Publick Soul* towards
 ‘Church and State, that he lived the Ho-
 ‘nour, and dyed a *Martyr* of both. I say,
 ‘this

Cyprianus Ang-
 licus, by Dr Hey-
 lin, D. D. and
 Chaplain to
 Charles the 1st
 and Charles the
 2d, 2 part.

Epist. Dedicat.

this Great, but at last unfortunate Pre-
late, thus delivers his Considerate Opini-
on, that the *Supream Magistrate* in the
Estate Civil, may not abrogate the Laws
made in Parliament, though he may dis-
pense with the *Sanction* or *Penalty* of
the Law, *quoad hic & nunc*, as the Law-
yers speak.

Arch-Bishop
Laud against
Fisher, Printed
1673.

The next I shall give You, is, that
Learned and moderate *Primate* and *Me-
tropolitan* of all *Ireland*, Dr. *James Usher*,
late Lord Arch-bishop of *Armagh*, who in
his Book entituled, *The Ramer communica-
ted by God to the Prince, and the obedience
required of the Subject*, composed purpose-
ly for the Rights both of *Princes* and *Sub-
jects*, and for the confirmation of stag-
gering Loyalty, assures us, that POS-
TIVE LAWS, being (as other works of
men are) IMPERFECT and not free
from many *discommodities*, if the STRICT
OBSERVATION thereof should be
pursued in EVERY PARTICULAR;
it is fit the SUPREAM Governour
should not himself only be EXEMPT-

Vid Epif. de-
dicat. to King
Charles 2. by
James Tyrrell
Esq;

ED from SUBJECTION thereunto, but also be so far LORD OVER THEM, that where he seeth cause he may ABATE, or TOTALLY REMIT the PENALTY incurred by the Breach of them, DISPENCE with others for the NOT OBSERVING of them at all; yea, and generally SUSPEND the EXECUTION of them, when by experience he shall find the Inconveniences to be greater then the profit that was expected should redound thereby unto the Common-wealth. PLUTARCH setteth this down as a chief point of that natural skill which PHILOPOEMEN had in Government, that he 'did not only rule according to the Laws, but over-ruled the Laws themselves, when he found it conducing to the weal-publick.

Plutarch, in
Comparat. Fla-
minij et Philo-
poemen.

And he saith a little before, by the LAW OF THE KING, I understand such ordinances as are MEERLY CIVIL and POSITIVE; the COACTIVE POWER whereof being DERIVED from him who is the SUPREAM LAW-GIVER UNDER GOD ON EARTH, He himself cannot properly

properly be said to be tyed thereby. For as with the Grammarians, the Imperative mood hath no first Person, so with the Civilians,

(a) no man can command or forbid himself; at least wise; no (b) man can impose such a Law upon himself, but that he may recede from it when he pleaseth. And with the Schoolmen, a Law hath power to direct such Acts as belong to those who are subject to the Government of (c) another; whereupon no man, if we speak properly, doth impose a Law upon his own Acts. As no man therefore is superior to himself, so no man hath Jurisdiction over himself; because none can oblige a man against his will, but only his Superiour, and the Jurisdiction over a man's self may be dissolved at Pleasure.

(a) Marcian in l. si de re sua, de recept, arbit, vid. et Ulpian in l. ille a quo, Sect. Tempestivum, D. ad Senat. Trebel. et in l. Quod autem, Sec. Uxori quis D. de donat inter, viz.

(b) Hermog. in l. si quis Sect. 1. D. de leg. 3.

(c) Thom. 112. quest. 93. artic. 5.

KINGS therefore, as he affirms in another place, are said to be ABOVE THE LAWS whereby they govern their People, partly in respect of Themselves, partly in respect of Others: Of OTHERS, in as much as they have POWER to JUDGE (a) according to their own CONSCIENCE,

(a) Cynus in l. rescript. Cod. de precib. Imper. offerend.

and

Thom. in 1. 2.
quest. 96. artic.
5. ad 3.

*and not according to the Letter of the Law ;
as also to DISPENCE in some Cases with
the very OBEDIENCE, in some with the
PUNISHMENT required by the LAW.*

‘ For, he quotes *Aeneas Silvius* a little
after saying, ‘ *Equity is that which is just
‘ beyond the written Law : Now if the Law
‘ doth command one thing, and Equity
‘ perswade another, it is fit the Emperor
‘ should temper the Rigour of the Law with
‘ the Bridle of Equity, as He who alone
‘ may and ought to look unto that inter-
‘ pretation which lieth interposed between
‘ Law and Equity. Especially seeing no De-
‘ cree of the Law, although weighed with
‘ never so considerate Counsel, can suffici-
‘ ently answer the varieties and unthought
‘ on plottings of Mans Nature. And see-
‘ ing the Condition of human Law is such,
‘ that it runneth always without stint, and
‘ there is nothing in it which can be at a
‘ perpetual stand; it is manifest, that in tract
‘ of time the Laws which before were just,
‘ prove afterwards to be unjust, and be-
‘ come now unprofitable, now harsh, now
‘ unrighteous :*

' *unrighteous* : for the *moderating* whereof
 ' there is need of the Prince, who is Lord
 ' of the L A W S. For if it fall out, that
 ' any thing hath been more obscurely de-
 ' livered therein, it is fit the *Emperor* should
 ' *clear* it, and *amend* that *harshness* of the
 ' *Laws*, which he shall find to be *contrary*
 ' and *disagreeable* to his *humanity*. For
 ' where it is said, that a *Law*, although it
 ' be hard, should yet be *observed* ; that
 ' respecteth the *inferiour Judges*, and not
 ' the *Emperour* ; in whom is that *Power*
 ' of *moderating* the *Laws* which they call
 ' *Emenda*, or *Equity*, which is so *annexed*
 ' to the *Supremacy* of the *Prince*, that by
 ' no *Decrees* of man it can be pulled from
 ' it. Thus far *Aeneas Silvius* out of
 ' him.

Aeneas Silvius
de Ortu &
Authoribus Im-
perii, cap. 20.
 21.

' In regard of Themselves *Kings* are said
 ' to be *exempted* from *Subjection* to the
 ' *Laws*, both because they are not *tyed*
 (otherwise than for conveniency and
 good Example's sake) ' to the observance
 ' of such as are meer positive and tempo-
 ' rary *Laws*; and because they are not
 ' liable

‘ liable to the Civil Punishments set down
 ‘ for the breach of any Law, as having
 ‘ no superiour upon earth that may exer-
 ‘ cise any such Power over them.

(a) Justin Ju-
 nior, *Imp. in*
præfatione con-
seit 3.

(b) Symmach,
 l. 10. Ep. ult.

And again, saith this Great Prelate,
while the Laws do stand in force, (a) it is fit
 ‘ that somtimes the King’s *Clemency* should
 ‘ be *mingled* with the *severity* of them;
 ‘ especially when by that means the *subjects*
 ‘ may be *freed* from much *detriment* and
 ‘ *dammage* : (b) The *Condition* of the *Ma-*
 ‘ *gistrates*, whose *Sentence* is held *corrupt*,
 ‘ if it be *milder* than the *Laws*, being one
 ‘ thing; the *Power* of *Princes*, whom it
 ‘ *becometh* to *qualifie* the *sharpness* of them,
 ‘ a far *different* matter.

(c) In his Pre-
 face and Life
 by Dr Isaac
 Walton.

To this Eminently Reverend and Ju-
 dicious Primate, I shall next subjoyn the
 (c) *humble, patient and learned* Dr Robert
 Sanderfon, late Lord Bishop of *Lincoln*, that
 you may see what his Opinion is in this
 matter. But before I give you his Words,
 let me beg your favour to hear what
 the *Modest and Holy Writer* of his Life,
 Dr Isaac Walton says of that Book from
 whence

whence I produce them. *How much the Learned World stands obliged to Him for his Lectures de Conscientia, I shall not attempt to declare, as being very sensible, that the Best Pens must needs fall short in the commendation of them: So that I shall only add, that they continue unto this day, and will do for ever, as a Compleat Standard for the Resolution of the most material doubts in Casuistical Divinity. And now Sir, pray observe what the Bishop says.*

Upon a Doubt, how may that be understood which so commonly is spoken, Salus Populi est Suprema Lex, the safety of the People is the Supream Law; he, among other things, thus declares, 'There is no sober man will deny, that the Safety of the People, that is, of the whole Commonalty, as that word comprehends the King, together with the Subjects, is the Supream Law; but that the Safety of the People, that is, of the Subjects, the King being excluded, is the Supream Law, there is no man will affirm it, unless he be a Fool, or an Imposter; a Fool, if he doth

C

'believe

Bishop Sander-
son's Cases of
Conscience,
translated by
Robert Codrington,
Master of
Arts, Printed
1663. ninth
Lecture.

'believe what he himself saith, and an
 'Imposter, if he doth not believe it. But if
 'any man will seriously look into the O-
 'riginal of this Aphorism, I do believe he
 'will more easily grant, that it ought
 'more precisely to be understood of the
 'Safety of the Prince, than of the Safety
 'of the Subjects. This Saying, so tossed
 'up and down in the Mouthes of all
 'Men, came to us from the *Romans*, and
 'was then used by them when their Re-
 'publick did flourish most of all under
 'a Popular State: And there is no great
 'Reason that any man should wonder,
 'that the People's Safety was the Supream
 'Law with them, with whom the People
 'themselves were the Supream Power;
 'In the Judgment therefore of those wise
 'Antients, who were the first Authors of
 'this Aphorism, the Safety of the *Supream*
 'Power was the *Supream Law*, of the *Peo-*
 '*ple* indeed in a *Democracy*, but of a *King*
 'in *Monarchy*.

'But I say, it being admitted, but not
 'granted, that this Aphorism is properly
 'understood

understood of the *Safety of the People*,
 that is, of the Subjects, it is nevertheless
 perversly wrested to the *Prejudice of Re-*
gal Dignity, which even so doth render
 its Power more Ample and Illustrious in
 this sence. A King that gives *Laws* and
Statutes to his People will not be so bound
 up by his *Laws*, that it shall not be law-
 ful for him, the *safety of the Common-*
wealth being in an apparent danger, to
 provide for the *safety of Kingdom* and
 People committed to him by God, even
 against the words of the *Law*; not that
 it is lawful for Subjects under the pretence
 of the defence of their *Liberty* to break
 all the bonds of *Laws* and *Fidelity*, and
 by an intollerable presumption to trample
 on the *Authority* of their King, but that
 it is lawful for the Prince, in the *Preservati-*
on of his own and his Subjects Safety, to lay
 aside for a while all strict observance of the
Laws, and to make use a little of an *Arbi-*
trary Right, least by too unseasonable and
 superstitious Reverence of the *Laws*, he may
 suffer both his own Person, and his People
 that

‘ that are subject to him, and even the
 ‘ *Laws* themselves, to *fall* into the *Power*
 ‘ of his *Enemies*.

I will close up this Christian Doctrine
 of our Bishops with one Authority more,
 and that is of our Present Right Reverend

Sermon preach-
 ed upon the a-
 niversary so-
 lemnity of the
 happy Inaugu-
 ration of our
 dread Sovereign
 Lord King

James 2. by
Thomas Cart-
wright, D. D.
 Dean of *Rippon*,
 and Chaplain in
 Ordinary to his
 Majesty.

Father in God, *Thomas* Lord Bishop of
Chester, in his Sermon on the 6th of Feb.

1681. in the Collegiate Church of *Rippon*,

where you will find him thus to inform

you, and all other good Subjects; ‘ So that

‘ the King may, it seems, make use of *his*

‘ *Prerogative*, as God does of *his Omnipot-*

‘ *tence*, upon some extraordinary occasi-

‘ ons: For as *my Lord Hobart* well ob-

‘ serves, *The Statute Laws are made to ease*

‘ *him of his Labour, not to deprive him of*

‘ *his Power, and that he may make a Grant*

‘ *with a* Non-obstante to them: And indeed

‘ the Power of *dispensing* with particular

‘ *Laws*, in some Emergencies, is such a

‘ *Lex Coronæ*, such a *Prerogative*, without

‘ which no Kingdom can be well govern-

‘ ed, but *Justice will be turned into Worm-*

‘ *wood*. For there never was yet, nor ever

‘ will

Colt and *Glo-*
ver against the
 Bishop of *Litch-*
field.

'will be, any human Law, framed with
 'such exact Skill and Policy, that it might
 'not, on some occasion or other, be bur-
 'thenfome to the Subject, and obstructive
 'to the publick good of the Common-
 'wealth: There being particular Cafes
 'and Exigencies, fo infinitely various,
 'that 'tis impossible for the wit of man to
 'forefee or prevent them. And therefore
 'in all Government there must be a *Power*
 '*Paramount* to the *written Law*; and we
 'have good reason to blefs *God*, that this
 'is lodged but *in One*, and in him whom
 'he hath fet over us, to be his *Vice-ge-*
 '*rent*; by whose Authority, they who
 'break *the Letter of the Law*, in pure
 'Zeal and Loyalty, to ferve the ends of
 '*Government*, and to uphold the *Crown* on
 'the Right Head, that *does* and *ought* to
 'wear it, may be *relieved*, and *pardoned*,
 and *rewarded* too.

Thus Sir, have I given you in fhort
 the Sence and Judgment of our Spiritual
 Guides, the Great Fathers of the Church
 of *England* in the Point in Question be-
 D tween

tween us ; I will now discend to men of less degree in the Church, but they shall be men of great and eminent Learning, sober Understandings, and of examplary Piety and Gravity, and you shall hear how they All concur in the same Judgment as concerning this Point of Regal Sovereignty.

The First shall be the Reverend Dr *Peter Heylin*, ' whose knowledge was extensive as the Earth, and who had a perfect familiarity with the present State ' of all the Countries in the World, (as the Ingenious Author of his Life informs us) and ' one who is honoured by all ' true Sons of the Church of *England*, ' with a due veneration for his Learned ' and Elabourate Works. And He speaks thus.

' He (*viz.* the King) hath Authority ' by his *Prerogative Royal* to *dispen*ce with ' the *Rigor* of the *Laws*, and sometimes ' to *pass* by a *Statute* with a *Non-obstante*.

The Learned and Judicious Dr *Isaac Barrow*, late Master of *Trinity Colledge* in *Cambridge*.

In the Account
of Dr *Heylin's*
Life.

Cambridge, in his Treatise concerning the *Popes Supremacy* affirms thus — ‘It is
 ‘indeed a proper Indowment of an ab-
 ‘solute Sovereignty, immediately and
 ‘immutably constituted by God, with no
 ‘Terms or Rules limiting it, that its will
 ‘declared in way of Precept, Proclamati-
 ‘ons concerning the Sanction of Laws,
 ‘the Abrogation of them, the Dispensation
 ‘with them, should be observed.

And says he a few Leaves futher, ‘The
 ‘Power of enacting and dispencing with
 ‘Ecclesiastical Laws touching exterior
 ‘Discipline did of old belong to the Em-
 ‘peror. And it was reasonable that it
 ‘should; because old Laws might not
 ‘conveniently sute with the Present State
 ‘of things, and the publick welfare;
 ‘because new Laws might conduce to
 ‘the good of Church and State, the care
 ‘of which is incombent on him; because
 ‘the Prince is bound to use his Power and
 ‘Authority to promote Gods Service, the
 ‘best way of doing which may be by fra-
 ‘ming Orders conducible thereunto.

And in another place he declares that
 'it is a Priviledge of Sovereigns to grant
 ' *Priviledges, Exemptions, Dispensations.*

Dr Sherelock's
 Case of Refi-
 stance, chap. 6.

Thus sayes the Reverend Dr *Sherelock*,
 Master of the *Temple*, in a positive man-
 ner, 'it does not become any man, who
 ' can think three Consequences off, to
 ' talk of the *Authority of Laws*, in *deroga-*
 ' *tion* to that *Authority of the Sovereign*
 ' *Power*. The *Sovereign Power* made the
Laws, and can repeal them, and *dispen-*
 with them, and make new *Laws*: the
 ' *only Power* and *Authority of the Laws* is
 ' in the *Power* which can make and exe-
 'cute *Laws*. *Sovereign Power* is inseper-
 'able from the *Person* of a *Sovereign*
 ' *Prince*.

Dr *Nalson's*
 Common Inte-
 rest of King &
 People, chap. 6.

I shall in the next place give you the
 words of the Ingenious, and most pain-
 ful Searcher into Truths, *John Nalson*, Dr.
 of *Laws*, whose indefatigable Industry
 hath sufficiently appeared in those Vo-
 lumes of Historical Collections he lived
 to see published to the *World*, his words
 are These.

' In

‘In the *Kings Power* it is to *remit* the
 ‘*Severities* of the *Penal Laws*, whereby
 ‘he may manifest his *Goodness* and *Cle-*
 ‘*mony* as well as his *Greatness* and *Justice*,
 ‘by graciously *pardoning* the *Smaller*
 ‘*Breaches* of his *Laws*, and the more
 ‘*Capital Offences* which he might most just-
 ‘ly punnish.

And who in the World can dispute
 this? When, as *Dr. Hick’s* in his *Jovian*
 tells us for certain, that *upon whomsoever*
God is understood to bestow the Sovereign
Authority, he must also be understood to be-
stow upon him all the Jura Majestatis, or
essential Rights of Sovereignty, according
to that Maxime, ‘Qui dat esse, dat et
 ‘*omnia pertinentia ad esse; He that gives*
 ‘the *Essence*, gives also the *Properties*
 ‘*belonging to the Essence*. And doth
 not all mankind consent in this, that the
King is the fountain of mercy as well as of Ju-
stice? Surely then the *Penal Laws*, especial-
 ly those made *meerly* for *diversity* of *Opi-*
nions in Religion, which (not to call them
unchristian; since our Saviour never offered
 any

Case of Re-
sistance.

any external force and Compulsion to make men obey his Laws, as the Learned master of the Temple assures us, but however) are in themselves by experience proved very unreasonable, ought at least to be Subject to the Goodness and Mercy of the Prince, to dispence with them, when He in his Wisdom shall judge it most necessary for the Good of his People in generall. For as 'the *Aegyptian Hieroglyphick* for 'Government was an *Eye in a Scepter* : 'So the chief Magistrate is like a watch-
man upon a Tower, who is to look
down and view the general state of
'his People, and to conduct himself ac-
'cordingly.

De jure Unifor-
mitatis Ecclesi-
asticæ: by Hugh
Davis, L. L. B.
lib. 3. chap. 15.

Chap. I.

The Reverend Dr Puller, in his most extraordinary Book concerning the *Moderation of the Church of England*, saith, 'that *Ἐπιείκεια*, Moderation, as it is now 'generally used, is a word borrowed from 'the Law, and is used by the Masters 'thereof, to denote such a gentle and be- 'nign temper, as disposeth those who have 'the *Administration* of the Laws (which,
You

You see, is the Imperial Sovereign, *who bath the Supream Jurisdiction over all others, and Jurisdiction is defined by the Civilians to be, Potestatem Juris dicendi, a Power of giving Laws to others*) 'to remit of their *Rigour*, where either (first) they press 'too hard upon particular persons; or else ' (secondly) to supply the defects of the said 'Laws, where they provide not sufficiently 'for particular cases; in order thereunto, 'squaring their Determination by the *natural rules of Justice and goodness*, rather 'than by the Letter of the Law.

And a little further, the same Doctor goes on, saying, 'moderation, in the 'Forensick sence wherein we take it, is defined by Aristotle to be the Correction of the Laws wherein because of their Universality they are deficient. 'From whence, 'as it must be supposed, to be confined 'to those to whom the Administration of 'the Laws is committed, who Alone can 'have the Power of correcting them: So 'nothing therefore will be further requisite to shew, than that it disposeth them, 'where:

Davies ut supra
lib. 2. chap. 6.

Dr Puller's Moderation of the Church of England, chap. 1.

Ἐπαγὼς θάμα νόμος ἢ ἁλλοτρίαις διὰ τὴν κατὰ φύσιν.
Arist. Eth. l. 5. chap. 14.

‘where the *Laws* press too *hard* upon
 ‘*particular persons*, to *relax* the *Rigour*
 ‘of them; as on the other side, where
 ‘they do not *sufficiently provide* for them,
 ‘to supply their defect.

‘All *Laws*, we know, are for the pu-
 ‘nishment of Evil Doers, or for the
 ‘praise of them that do well: but it be-
 ‘ing impossible so to provide for the pu-
 ‘nishment of evil doers, as not sometimes
 ‘to bring even the Innocent within the
 ‘compass of it; because what, general-
 ‘ly considered, ought to be lookt upon
 ‘and censured as evil, may yet upon sun-
 ‘dry considerations and circumstances
 ‘have nothing of evil in it, or at least be
 ‘worthy of pardon; either the *Innocent*
 ‘must *suffer* together with the *nocent*,
 ‘(which so *benign* a *vertue* as that we
 ‘treat of cannot *allow*) or it must dispose
 ‘those to whom the *Administration* of the
 ‘*Laws* is committed to remit of their
 ‘*rigour* in such *particulars*, and *exempt*
 ‘them from the undergoing of it: it
 ‘being in like manner impossible for *Laws*
 so

'so to *provide* for the *incouragement* of
 'those who *deserve* well, as that some-
 'time such may not be past over or neg-
 'lected; partly because all cases cannot be
 'foreseen by the *Law-giver*; and partly
 'by reason of the shortness of his expressi-
 'ons; either some who may deserve in-
 'couragement may be excluded from
 'partaking of it, (which so *benign* a ver-
 'tue as we speak of cannot *easily* permit)
 'or it must dispose *those* to whom the
 'Administration of the *Laws* is committed
 'to *ampliate* their *favours*; and to take *such*
 'within the *compass* of them.

*Est Scriptum
 Legis angustum
 interpretatio
 diffusa. Senec. l.
 4. controu. 27.*

Once again, '*Equity* and *moderation*,
 saith He in the next page, 'is the *publick*
 'honesty of the *Laws*; without which,
 'Justice often would be turned into
 'Wormwood: it contains the excellent
 'Spirit (*διδόξα*) the *mind* and *reason* of the
 'Law, and is the most *Sacred* and *vere-*
 'rable part of it: As it is the *honour* and
 'perfection of the *Laws*, so it is the *Sanctua-*
 'ry of such as happen to be *oppressed* by the
 'Rigour of the *Letter*.

E

I

I will now, Sir, trouble you with but one instance more upon this Subject, (though I could multiply, I am confident, Authorities of this kind even beyond your patience) and that is of One, that will needs be Anonymus, and therefore so he shall pass for me, but his words are These.

The Harmony
of Divinity and
Law, in a dis-
course about
not resisting of
Sovereign
Princes.

'It is the *Prerogative* of the King, to
'*dispense* with many Acts of Parliament
'by a * *Non-obstante*, or *clause of notwithstanding*, especially such, as bind him
'from any *Prerogative*, that is *sotely*, and
'*inseparably* annexed to his *Sacred Person*,
'and *Royal Power*.

And even to the Asterick * There is this
marginal Note, viz, ' 44. Eliz. *in the house*
'*of Commons* Sir George Moor said; We
'know the Power of her Majesty cannot
'be restrained by any Act. Why there-
'fore should we thus talk? admit we
'should make the statute with a *Non-*
'*obstante*, yet the Queen may grant a
'Patent with a *Non-obstante* to cross this
'*Non-obstante*.

Townsend's
Collect. pag.
234.

I have done, Sir, now with our Reverend Prelates and Doctors of the Church of *England* as to this Particular, and hope, I have sufficiently proved to you, that their Judgment and Doctrine doth clearly warrant this Great Prerogative of dispensing with Penal Laws, to be in the King.

Let us see in the next place what were the Reasons that induced the Reverend Judges in *Westminster Hall*, (who (the Law sayes) are the Expositors of Acts of Parliament, and are likewise *Custodes jurati ss. Prærogativa Regia*,) so openly and solemnly, after mature deliberation, to declare their Resolutions in this Point for the King.

The Reasons that perswaded them were These that follow, viz.

I. That the Kings of *England* are Sovereign Princes.

II. That the Laws of *England* are the King's Laws.

III. That therefore it is an Incident Inseparable

Inseparable Prerogative in the Kings of *England*; as in all other Sovereign Princes to *dispence* with *Penal Laws* in particular cases, and upon particular necessary Reasons.

IV. That of these Reasons, and these Necessities, the King himself is the sole Judge. And then which is Consequent upon all.

V. That this is not a *Trust* invested in, or granted to the King by the *People*, but is the antient Remain of the Sovereign Power, and Prerogative of the Kings of *England*, which never yet was taken from them, nor can be.

Now, Sir, if such hath been the Doctrine of our most *Eminent* Clergy of the Church of *England*, (and in it they have delivered to us nothing but the words of Truth in Righteousness) that the *King* by his *Imperial Sovereignty*, when he shall see the *Necessity* of the State to require it, (of which he is the *only Judge*,) may *dispence* with *Penal Laws*. How can you,
or

or any man, who is a sincere lover of the Church of *England*, be dissatisfied with the Resolution of our Reverend Judges in this matter, seeing the Reasons they went upon were only such as were exactly correspondent with the avowed Doctrines before recited; and that by this Declaration of theirs, the *Law* of the Kingdom of *England* concerning this sovereign Power in the Crown, is no more, than what was before publickly asserted to be the *Divinity* of the Kingdom.

Besides, *Lex vigilat pro Rege*, saith the Law, and the Judges are sworn to maintain all the Kings Prerogatives; which are part of the Law of *England*, and comprehended within the same; therefore it is said, that *Imperij Majestas est Tutela Salus*, the Dignity of the Prince is the Peoples Security. The Kings Prerogative and Priviledges, are incident to his Crown, and He need not prescribe in any Prerogative, for it is as ancient as his Crown is, and is not only the Law of the *Exchequer*, but the Law of the *Land*,

Co. 2 Inst. f. 496.

1. Inst. 64. b.

Lanc. 26.

N. Bendl. 117.

Sheph. tit. Pre-
rog.2 Ro. rep.
508.Royallists de-
fence: chap. 5.
pag. 49.

as that which is his by the ancient Laws of the Land. Wherefore the Judges of the Courts of *Westminster* are to judge in matters of Prerogative by this Rule, that whatsoever may be for the Benefit and Profit of the King, shall be taken most largely for him, & whatever may be against him, and for his disprofit shall be taken strictly: and it is the Duty of every Judge of all Courts, High and Low, to take great care to preserve the Kings Right, and for that purpose to take every thing at the best for him.

And, Sir, *unto the Judges the People are bound lastly and finally to submit themselves for matter of Law*, according to the opinion of the Learned Author of the *Royallists Defence*.

But I remember likewise you seemed to startle at the thoughts of this *Power*; and were afraid, if at any time the *King* should think it *necessary* and *convenient* to exert it, and to grant a *general Liberty* of *Conscience*, that the *Church of England* would be extreemly *shaken* in her *security*.

ty. What strange Jealousies and Suspitions some weak men may have, I suppose it will not be here worth while to consider; but certainly our Great *Supporters* of the *Ark of God* can never allow themselves in so *feminine* a passion. They know they have an infinitely wise *God*, and a most Gracious *King* to trust to : this hath been their Doctrine, and ought we not to practice it ? They say,

1. ' They have the Care and Providence
' of God for their Security, who is King Jovian chap. 12.
' of Kings, Lord of Lords, and the only
' Ruler of Princes ; and that *the Hearts*
' of Kings are in his Rule and Governance,
' and He doth dispose and turn them as seem-
' eth best to his godly Wisdom : according
' to what Solomon said, and perhaps upon
' his own experience, *That the Kings*
Heart is in the hand of the Lord, as the Ri-
vers of Water, he turneth it whithersoever he
will. ' SO THAT THEY HAVE ALL
' THE SECURITY THAT ANY PEO-
' PLE IN THE WORLD EVER HAD,
' HAVE, OR OUGHT TO HAVE. Be-
' sides, F 2 2. They

2. They have a most Gracious King to trust to. For,

His Majesties
most Gracious
Declaration, &c.

Bishop of Chesh-
ters Sermon
ut sup.

1. They have his Royal Word, *that he will protect and maintain the Church of England, in the free exercise of her Religion, as by Law established*; 'and can she
'ever be trusted in safer Hands than his?
'He hath done more than ever any of
'us durst ever venture to look for, to give
'us Confidence in him; enough to puzzle
'our Understandings, as well as our Gra-
'titude: And how can he give us *better*
'*security* than he has done? Shall we sus-
'pect him without cause? or remain
'dissatisfied when he hath given us the
'best security that our Cause admits of?
'To suspect our Prince, where we can-
'not help our selves, is of all fears the
'most unreasonable.

Jovian ut sup.

2. Again, 'We have the *Conscience* of
'*the Prince* for our security, who hath
'all the moral Obligations, and the fear
'of God, to keep him from oppressing
'us, so long as we keep our selves within
'*the Conscience* of the Duty which we owe
'unto him. 'The

' The Common Principles of Huma-
 ' nity, Justice and Equity, are engraven
 ' by the Finger of God upon the Minds
 ' of Kings, as well as upon other Mens; and
 ' they cannot do wrong upon any parti-
 ' cular Person, much less to great num-
 ' bers of their Subjects, without under-
 ' going the same uneasie remorse that o-
 ' ther men do, when they injure one ano-
 ' ther. This hath been found by sad ex-
 ' perience in *Pagan Princes*. — And if
 ' Conscience be a restraining Principle in
 ' *Heathen Princes*, if they cannot without
 ' such Soul torments pervert Justice, and
 ' violate their Oathes, and the Laws, it
 ' must needs much more be a powerful
 ' Principle of Restraint to *Christian Kings*,
 ' who are taught to know that they are
 ' Gods Ministers, and that he will call
 ' them to a severe Account for oppres-
 ' sing his People over whom he set them :
 ' And shall not the fear of God's Anger
 ' and Judgments keep the Sovereign from
 ' injuring of them ?

3. But further still, ' As the *Church of*
England

' *England* hath the Prince's Conscience,
 ' for her Security, so she hath his honour
 ' too. For Princes (like other men) are
 ' tender of their Honour, and good
 ' Name, and are powerfully restrained
 ' by shame from doing Evil to their Sub-
 ' jects. — Though they may be desir-
 ' ous for their honour to have the Times
 ' computed from their Conquests, yet
 ' the same Principle of Honour will ordi-
 ' narily make them ashamed to have them
 ' computed from their Massacres, and
 ' Persecutions, which will but get them
 ' the Surname of *the Bloudy*, or *the Tyrant*,
 ' unto the end of the World. Honour,
 ' as Moralists observe, is a Secondary, or
 ' Civil Conscience.

Bishop. of Ches-
 ters Sermon. ut
 sup.

And as for our Prince, ' who was ever
 ' so exceeding tender of his Honour as
 ' He? so just to all, and hath He not
 ' promised to uphold and maintain this
 ' Church, and her Legitimate Children?
 ' — He knows, that *ours is a Religion*
 ' that hath alwayes asserted the *Rights of*
 ' *the Crown*, with life and fortune : and
 how

‘how chearfully the Members of it have
 ‘spent their Blood and Treasure in *his*
 ‘*Own, his late Majestie’s, and his Father’s*
 ‘*Service*, and how they stand affected to
 ‘*his Prerogative*.

‘And He is very well content, we
 ‘should be as faithful to *God*, as we are
 ‘to *him* ; as true to *our Religion*, as to
 ‘*our King* : *God* preserve and prosper him
 ‘for it.

Now since our *own Religion* (as to the
 free exercise of it) is thus *Secured* to us,
 and seeing that by his Majesties *Gracious*
Declaration he is willing that *no* man
 should be forced to *his Religion*, or drove
 against his *Conscience* from the *Religion*
 he professeth ; and seeing it is manifest-
 ly necessary, that, as Sails, so Laws, are
 to be turned, and as Occasion, time and
 circumstance, and reason of state shall
 direct, either to be altered, or revoked:
 And if Acts of Parliament formerly made
 to try what good effects they could
 work in the state, do apparently prove
 mischievous and ineffectual by their too
 great

great rigour and violence, and by the Great Numbers of those that are of dissenting Judgments?

What dishonour can it be for the King to lay them asleep for a while to stay those passionate heats, and fierce oppositions of such as seem adversaries to his Grace, or for any Parliament to repeal them, for the same Reasons, *non coerces sed provocat violentia*, For too heavy a hand upon those whom the Law casts down, shews the will rather to oppress the Offender, then to cure the offence? 'Tis the greatest honour to Kings, that their mercy, like that of the Almighty, is more eminent than their Justice, and that their Benches, and Courts, can witness more compassion than severity; for He that sets open the Prison doors in so wise and gracious a manner, meaneth not to conquer the Hearts and Consciences of his People by Torment, but to winn them by mercy and sweetness. Clemency is a virtue sometimes of as great policy as Piety, because it begets Love, and Love

Love breeds Loyalty, commands the very Soul, and lays the Body at the Feet of the obliger : Mercy kindles Fire and Zeal in the Hearts of Subjects.

Liberty of Conscience is a Natural Right, and therefore our Saviour compelled none to receive his Doctrine, but *est Dominus non Cogens*, he is not a constraining Lord, but committing his Liberty to the will, said publickly to all, *if any man will come after me*; and to his Apostles, *Will ye also go away?* and his Disciples were not Commanders, but Instructors and Teachers, which was their Commission. Compulsion and terrene Penalties are out of his Jurisdiction, *whose Kingdom was not of this World*, which he acknowledgeth not only in speech, but in practise: For when the Disciples would have commanded *Fire from Heaven* to have consumed the Samaritans, he rebuked them; and when he was apprehended by the Chief Priests and Elders, he could have commanded Legions of Angels, but would not. It is

Gratius.

Luke 9. 54.

Matth. 26. 53.

G

Irreligion

Chap. de Act.
Imp. f. 139.

2 Cor. 1. 24.

Irreligion to take away the Liberty of Religion; so *Tertullian*, *ad Irreligiosiarum Elogium concurre*, this concurrerth to the commendation of Irreligion, to take away the liberty of Religion, &c. and therefore, saith the Apostle, *we have not Dominion over Your Faith.*

Sir, I cannot tell how well to shut up this Discourse without the words of that Learned and most Reverend Dr. Gerard Langbaine, who was Provost of Queen's Colledge in Oxford, so well known to all, not only at home, but abroad, that the Famous Rhetorician, *Longinus*, could scarce speak any thing beyond the merit of so excellent a Person. This Doctor in his Judicious *Refutation* of the Damnable League & Covenant, (which was then so furiously contended for) to be imposed upon the Consciences of those who expressed their Zeal to his Majesties righteous cause, in which, without all peradventure, he spoke the inward Sentiments of all the Loyal Suffering Clergy of England, doth there most admirably

rably instruct us, what a sandy Foundation that is, which supports Persecution for Conscience sake. His words follow.

‘Persecution in matters of meer Religion is a Course against the Nature of Religion it self, for Faith, the Soul of Religion, is an inward Act of the Soul, which all the Tyranny in the World, that the malice of the Devil can invent, or the wit of man can exercise, can neither plant where it is not, nor extirpate where it is. It is the gift of God, freely begotten in the Hearts of Men, not by threats and Terrors, not by Tortures and Mafacres, but by the quiet still voice of the word preached, *Suadenda, non cogenda*. And therefore *St. Paul*, though a Lawful Governour in the Church, flatly disclaims any domineering Power over the Conscience. As for the outward profession of Religion, neither is that Subject to force and violence : A man may confess Christ, and his Faith in him, as

Langbein's Review of the Covenant, Printed 1661.

freely in bonds, as at Liberty; as gloriously upon the Cross, as upon the Throne. Fear indeed may incline a weak Conscience to dissemble his Opinion, but cannot constrain him to alter it: Fire and Faggot are strong Arguments of a weak Cause, undeniable Evidences of Cruelty in Those that use them, but slender motives of Credibility to beget faith in those that suffer by them. Lastly, for the external, free, and publick practise of Religious Duties, that I grant may be restrained by the outward violence of man, but when it is so, it is not required by God, who never expects to reap what he did not sow.

In another place, he says, the most Ancient Apologists for the Christian Faith, use this as an Argument to prove the Religion of their Persecutors to be false, and their own true, That stood in need of humane force to maintain it, but theirs stood by the sole Power of God.

It is against (says he a little further) the

the Innate Principle of the Law of Nature, *Quod tibi fieri non vis, alteri ne feceris.* Those, who plead most for extirpation of Hereticks, when it comes to be their own Turn to be under the Cross, stand for Liberty of Conscience, and declaim against Persecution for Religion, as a thing utterly unlawful; and surely if we will not suffer it from others, we may not use it our selves.

Therefore, as Dr *Fuller* rightly sayes, *Fuller's Moderation. To the Reader.* if ever the Practice of Moderation, as well as any Discourse thereof, were reasonable; it may be supposed now, when, for ought we know, the lasting happiness of the *Kingdom* and *Church*, may depend immediately upon this rare and desirable Temper, acknowledged of all most excellent.

I will conclude all with that Admirable Sentence of Dr *Barrow* in his fore-mentioned Treatise, that *Relief of the Oppressed, or Clemency to the distressed, are noble Flowers in every Sovereign Crown.*

Thus

Thus, Sir, You see how ready I am,
as far as my Abilities will extend, to
contribute to the Satisfaction of Your
Judgment. I shall be as zealous still to
go on in so pious a Duty, if there be
any remaining doubts and Scruples you
will make known to,

SIR,

Your humble Servant, &c.

FINIS.
